

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

**LEE EDWARD ANDERSON,**

**Plaintiff,**

**v.**

**Case No 6:19-cv-2014-JA-GJK**

**WAYNE IVEY and ZACHARY  
FERREIRA,**

**Defendants.**

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**ORDER**

Plaintiff's Motion to Permit Video/Zoom Testimony in Lieu of Live Appearance (Doc. 85) is before the Court for consideration. Defendants oppose the motion. (Doc. 87). The Court finding good cause, the motion is due to be granted.

This case was set for the Court's April 2021 trial term on December 23, 2019. (Doc. 25). In 2020, due to the Covid-19 pandemic, the court was required to implement certain protocols for the safety of the parties, the attorneys, the jury venire, and court staff in order to proceed with hearings and trials. Due to these protocols, the availability of courtrooms was diminished. In light of this diminished capacity, on March 9, 2021, this matter was set for time certain to begin on May 17, 2021. (Docs. 80, 83).

Plaintiff seeks to have one of his witnesses, Timothy Plymale, appear at trial via zoom. Mr. Plymale submitted an affidavit in support of Plaintiff's request. Mr. Plymale, as a Federal Contractor for Lockheed Martin and General Dynamics Information Technology, provides firearms instruction around the United States. (Doc. 85 at 4). The training dates are "set a year in advance to accommodate logistics for equipment and personnel, as well as securing location availability." (*Id.*). Mr. Plymale is scheduled to train on May 18, 19 and 20, 2021 in Ft. Lauderdale, Florida. (*Id.* at 4-5). Due to the scheduling occurring a year out, Mr. Plymale states he would not be able to secure a replacement instructor at this late date. (*Id.* at 5). Mr. Plymale also states there is a student/instructor ratio that is mandated by Federal guidelines in these training classes and his presence is required for the safety of the students on the firing line. (*Id.*).

Neither Plaintiff nor Mr. Plymale indicate if Mr. Plymale was available for the originally scheduled trial term of April 2021, but in any event, in scheduling a year out, there was no way Mr. Plymale could have known the trial would be postponed to May 2021. In other words, the trial rescheduling was unexpected. Mr. Plymale is willing to appear via zoom during the scheduled trial time. (*Id.*).

"The primary purposes of Rule 43(a) are to ensure that the accuracy of witness statements may be tested by cross-examination and to allow the trier of fact to observe the appearance and demeanor of the witnesses." *In re Adair*, 965

F.2d 777,780 (9th Cir. 1992). The use of videoconferencing technology, in this case, Zoom, for Mr. Plymale's testimony will not have a significantly adverse effect on Defendants' ability to cross-examine Mr. Plymale or the ability of the jury to make credibility determinations about Mr. Plymale.

The Court finding good cause to allow Mr. Plymale to testify via zoom, Plaintiff's Motion to Permit Video/Zoom Testimony in Lieu of Live Appearance (Doc. 85) is **GRANTED**.

**DONE** and **ORDERED** in Orlando, Florida, on May 12<sup>th</sup>, 2021.



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JOHN ANTOON II  
United States District Judge

Copies furnished to:  
Counsel of Record